

**STATE OF ILLINOIS  
ILLINOIS COMMERCE COMMISSION**

**IN RE: ENBRIDGE PIPELINES  
(ILLINOIS) L.L.C.**

**Application pursuant to Sections 8-503, 8-509  
and 15-401 of the Public Utilities Act - the  
Common Carrier by Pipeline Law to Construct  
and Operate a Petroleum Pipeline and when  
necessary, to Take Private Property as  
Provided by the Law of Eminent Domain.**

**DOCKET NO: 07-0446**

**SHELBY INTERVENORS' MOTION TO STRIKE ENBRIDGE'S MOTION TO STRIKE LATE-  
FILED PLEADINGS, VERIFIED RESPONSE TO APPLICANT'S MOTION TO STRIKE LATE-  
FILED PLEADINGS, AND MOTION TO AMEND SCHEDULING ORDER**

NOW COMES Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion Coal Holdings, LLC ("Shelby Intervenor"), and for their Motion to Strike Enbridge's Motion to Strike Late-Filed Pleadings, Verified Response to Applicant's Motion to Strike Late-Filed Pleadings and Motion to Amend Scheduling Order, state as follows:

1. Obviously fearing for the success of its case on the merits, Enbridge seeks to strike Shelby Intervenor's Brief on Exceptions that was filed with the Chief Clerk's Office at 5:00 p.m. on Friday, June 12, 2009, but admittedly not delivered to Enbridge's attorneys until 6:11 p.m. on June 12, 2009, (some 71 minutes late).
2. Enbridge characterizes the 71 minute delay in serving it as a "blatant disregard for the authority of the ALJ and for the Commission's policies and procedures ..."
3. Enbridge's "Motion to Strike Late-Filed Pleadings" contains numerous factual allegations and references to documents, but Enbridge's factual allegations are not supported by Affidavit and Enbridge has not attached any verified exhibits or citations to the record.
4. Enbridge purports to have brought its Motion pursuant to Section 200.190 of the Commission's Rules of Practice, but Enbridge's Motion abjectly fails to comply with Section 200.190(c), which unequivocally requires that:

“Motions based on matter which does not  
appear of record shall be supported by Affidavit.”

5. Enbridge’s flagrant disregard for this important procedural threshold renders its Motion void on its face, and Enbridge’s attorneys’ unsworn and unverified assertions merit no consideration whatsoever.

6. The attached Affidavits of Scott C. Helmholz and Lisa A. Johnson explain that Mrs. Johnson only began employment with Bailey & Glasser, LLP on Monday, June 8, 2009, 4 days prior to the deadline for the Brief on Exceptions, and had no previous experience with ICC electronic filings. Mrs. Johnson’s inexperience with Commission e-Docket filings, and the presence of the number of parties on the service list, coupled with Scott Helmholz’s recent transition to a new law firm, compounded the situation and, unfortunately, created an environment not conducive to completing service on Sidley Austin, LLP until 6:11 p.m.

7. In the event the Administrative Law Judge considers the merits of Enbridge’s Motion to Strike, Shelby Intervenors respectfully ask for a *nunc pro tunc* amendment to the Scheduling Order of June 2, 2009, extending the June 12, 2009, 5:00 p.m. deadline for service of copies on Enbridge for an additional 71 minutes, or through and including 6:11 p.m., so as to make Shelby Intervenors’ filing compliant.

8. Section 200.190(a) expressly authorizes motions for an extension of time to comply with an Order and does not prohibit filing such a motion after the specified deadline has occurred.

9. In support of this Motion, counsel for Shelby Intervenors advises the Administrative Law Judge that he resigned from his former law firm on May 1, 2009, and began the process of transitioning to a new office on May 5, 2009; during this timeframe and leading up to June 12, 2009, Shelby’s counsel could not act for Shelby (or any other client) until receipt of consent from Shelby (and other clients). The process of obtaining consents, transferring and moving client files, securing and furnishing new offices, and recruiting and hiring staff during this timeframe

severely hampered counsel's ability to function effectively and contributed to counsel's difficulty in completing delivery of a copy of the Brief on Exceptions to counsel for Enbridge until 6:11 p.m.

10. Counsel for Shelby Intervenors apologizes to the Administrative Law Judge and counsel for Enbridge for this delay and prays that, in light of Enbridge's apparent admission that it suffered no prejudice because of the 71 minute delay, the Administrative Law Judge will grant the Amendment prayed for herein.

**Shelby Coal Holdings, LLC, Fayette Coal Holdings, LLC and Marion Coal Holdings, LLC, (Shelby Intervenors),**

**By: \_\_\_\_\_  
One of Their Attorneys**

Scott C. Helmholz, Esq.  
Bailey & Glasser, LLP  
One North Old State Capitol Plaza, Suite 560  
Springfield, IL 62701  
Phone: (217) 528-1177  
Facsimile: (217) 528-1198  
[Shelmholz@baileyglasser.com](mailto:Shelmholz@baileyglasser.com)

**VERIFICATION**

STATE OF ILLINOIS            )  
  )  
COUNTY OF SANGAMON    )       SS.

I, SCOTT C. HELMHOLZ, Partner, Bailey & Glasser, LLP, have read the foregoing Motion filed in the above cause and know the content thereof and the same is true and correct to the best of my knowledge, information and belief.

\_\_\_\_\_  
Scott C. Helmholz

SUBSCRIBED and SWORN to before me this 16th day of June, 2009.

\_\_\_\_\_  
Notary Public

### **CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing ***Shelby Intervenors' Motion to Strike Enbridge's Motion to Strike Late-Filed Pleadings, Verified Response to Applicant's Motion to Strike Late-Filed Pleadings and Motion to Amend Scheduling Order*** was electronically served with the Illinois Commerce Commission and served upon the following by electronic transmission:

James Adams  
Adams Land Corp.  
20365 E. 1200 North Rd.  
Bloomington IL 61704

Mary Babb  
1632 N. Towanda Barnes Rd.  
Normal IL 61761

Roy P Farwell  
Attorney  
Union Pacific Railroad Company  
100 North Broadway, Suite 1500  
St. Louis MO 63102

William M Hacker  
1812 Cherry Rd.  
Oswego IL 60543

Andrew Holstine  
Atty. for Intervenors  
The Wochner Law Firm  
707 Skokie Blvd., Ste. 500  
Northbrook IL 60062

Joel W Kanvik  
Senior Counsel  
Enbridge Energy Company, Inc.  
1100 Louisiana  
Houston TX 77002

Donald Korte  
Korte Farm Partnership  
400 Douglas St.  
Park Forest IL 60466

Thomas J Pliura  
Atty. for Intervenors  
Law Offices of Thomas J. Pliura  
PO Box 130  
LeRoy IL 61752

Gerald Ambrose  
Atty. for Applicant  
Sidley Austin LLP  
One S. Dearborn  
Chicago IL 60603

John L Benjamin  
2375 Interlackin Circle  
Cleveland TN 37312

Doris Grunloh  
20514 N. 2150 East Rd.  
Towanda IL 61776-9413

Thomas J Healey  
Counsel - Regulatory  
Illinois Central Railroad Company  
17641 S. Ashland Avenue  
Homewood IL 60430

William J Holstine  
Trustee of Alice E. Temple Trust  
c/o Hertz Farm Management  
PO Box 500  
Nevada IL 50201

Carlisle E Kelly  
25457 Chestnut Dr.  
LeRoy IL 61752

James V Olivero  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield IL 62701

G. Darryl Reed  
Atty. for Applicant  
Sidley Austin LLP  
One S. Dearborn St.

Chicago IL 60603  
Jon Robinson  
Atty. for Intervenors  
Bolen Robinson & Ellis, LLP  
202 S. Franklin St., 2nd Floor  
Decatur IL 62523  
Janis Von Qualen  
Illinois Commerce Commission  
527 E. Capitol Ave.  
Springfield IL 62701

Dorothy Benjamin  
2025 E. Lincoln #1213  
Bloomington, IL 61701

Julia Davis  
Atty. for Intervenors  
The Law Office Of Mercer Turner  
202 N. Prospect, Ste. 202  
Bloomington, IL 61701

Roger Eide  
7105 Interlochen  
Eden Prairie, MN 55346

Carl Hinthorn  
22720 E. 1900 North Road  
Towanda, IL 61776

Mercer Turner  
Atty. for Intervenors  
Law Office of Mercer Turner, P.C.  
202 N. Prospect, Ste. 202  
Bloomington IL 61701

Nina S. Armstrong  
Trustee of Nina S. Armstrong Trust  
1150 W. Market St., Ste. 622  
Akron, OH 44313

Ron Block  
200 N. Bellmont Road  
Bloomington, IL 61704

Ruth Davis  
200 N. Bellmont Road

Bloomington, IL 61704  
Lorraine M. Hacker  
1812 Cherry Road  
Oswego, IL 60543  
DeAnna K. Kelly  
25457 Chestnut Drive  
LeRoy, IL 61752

Al Killian  
21328 E. 2200 North Road  
Towanda, IL 61776

Tim Kraft  
21448 E. 1900 North Road  
Towanda, IL 61776

Pleasant R. Murphy  
R 2 Box 14  
Heyworth, IL 61745

Rosemary King  
21024 East 1600 North Road  
Normal, IL 61761

Bernadine Murphy  
R 2 Box 14  
Heyworth, IL 61745

Village of Downs  
PO Box 18  
Downs, IL 61736

Commission Staff:  
Jones, Larry, Administrative Law Judge  
Freetly, Janis, Case Staff  
Maple, Mark, Case Staff  
Olivero, James V., Staff Attorney  
Von Qualen, Janis E., Staff Attorney  
Ann Alexander  
Senior Attorney  
Natural Resources Defense Counsel  
101 N. Wacker Drive, Ste. 609  
Chicago, IL 60606



Shannon Fisk  
Natural Resource Defense Council  
101 N. Wacker Drive, Ste. 609  
Chicago, IL 60606

Craig R. Hedin  
Atty. for Illinois Oil & Gas Association  
Campbell Black Carnine Hedin Ballard & McDonald, PC  
PO Drawer C  
108 South 9th Street  
Mt. Vernon, IL 62864

Margot Rudesill  
21024 E. 1600 North Road  
Normal, IL 61761

Mary Babb  
1632 N. Towanda Barnes Road  
Normal, IL 61761

Brian P. Granahan  
Environment Illinois Research & Education Center  
407 South Dearborn, Ste. 701  
Chicago, IL 60605

Elliott M. Hedin  
Atty. for Intervenor  
Brown Hay & Stephens, LLP  
205 South Fifth Street, Ste. 700  
Springfield, IL 62701

James R. Myers  
Atty. for the Fayette Water Company  
LeFevre Oldfield Myers Apke & Payne Law Group, Ltd.  
303 South Seventh Street  
Vandalia, IL 62471

Ann Sanner  
1616 Baltimore Ter.  
Manhattan, KS 66502

Rebecca Stanfield  
Director  
Environment IL. Research and Education Center  
407 S. Dearborn, Ste. 701

Chicago, IL 60605  
Carlisle E. Kelly  
25457 Chestnut Drive  
LeRoy, IL 61752

Eric T. Ruud  
Civil Division  
McLean County State's Attorney's Office  
PO Box 2400  
115 E. Washington Street, Ste. 401  
Bloomington, IL 61702-2400

Joseph B. Taylor  
PO Box 478  
216 S. Center  
Clinton, IL 61727

Paul and Carol Duffy  
758 N. 1st Road  
Dana, IL 61321

on this 16th day of June, 2009.

---

One of Its Attorneys

Scott C. Helmholz, Esq.  
Bailey & Glasser, LLP  
One North Old State Capitol Plaza, Suite 560  
Springfield, IL 62701  
Phone: (217) 528-1177  
Facsimile: (217) 528-1198  
[Shelmholz@baileyglasser.com](mailto:Shelmholz@baileyglasser.com)